IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.No.3211 of 2004

....

R.Sivasubramanian ... Appellant/Petitioner

vs.

S.Krishnaveni ...Respondent/Respondent

C.M.A. filed against the order dated 19.2.2004 made in F.C.O.P.No.85 of 2002 on the file of Family Court,Salem.

For appellant :: Mr.V.N.Subramaniyam

For respondent :: No appearance

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JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The unsuccessful petitioner/husband has preferred this appeal against the order dated 19.2.2004 made in F.C.O.P.No.85 of 2002 on the file of Family Court, Salem.

2.1. The marriage between the petitioner/husband and the respondent/wife took place on 28.4.1993 at Vasavi Kalyana Bhavanam, Shevapet, Salem as per Hindu rites and rituals. According to the petitioner, the marriage was not consummated as the respondent was not willing and the respondent treated him with disrespect and she often scolded him using filthy language and only after persuasion, the respondent came to live with him, but within a short period, she left the matrimonial home along with her brothers.

2.2. On the other hand, the respondent wife denied all the allegations. According to her, she behaved as a dutiful wife and she never abused her husband, but, it is the petitioner/husband who asked her to get a sum of Rs.5 lakhs from her parents and ill-treated her.

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2.3. On the side of petitioner, P.Ws.1 and 2 were examined and the respondent examined herself as R.W.1. Besides, Exs.P-1 to P-4 and R-1 to R-3 were marked on the respective sides.

2.4. The Family Court, finding that the evidence adduced on the side of the petitioner lacks corroboration and the petitioner has failed to prove his case against the respondent, dismissed the petition filed to dissolve the marriage.

2.5. Aggrieved by the same, the petitioner/husband has come forward with this appeal.

3. Heard Mr.V.N.Subramaniyam, learned counsel for the petitioner who has reiterated the contentions raised before the trial Court.

4. The point for consideration in this appeal is whether the petitioner/husband is entitled to a decree for divorce.

5. Though the petitioner originally sought for nullity of marriage on the ground of non-consummation, during enquiry, he amended the ground into one of cruelty. Therefore, what has to be seen is whether there is any act of cruelty to the petitioner/husband at the hands of the respondent/wife.

6. The marriage between the petitioner and the respondent that took place on 28.4.1993 at Salem is not disputed. According to the petitioner, the marriage is not consummated and the respondent was reluctant in having sex and she was treating him with disrespect and she left the matrimonial home without his consent. The wife denied all the allegations. In addition to that, she has stated that it is the petitioner who demanded money from her parents and when it did not materialise, the petitioner filed this petition for divorce.

7. The petitioner as P.W.1 has stated that the respondent/wife did not allow him to go near her. It is the evidence of P.W.1 that they lived together for 2 or 3 months in an independent house where also the respondent/wife picked up quarrels with him. But, he admitted in his cross-examination that except in the legal notice, he did not complain to anybody that the respondent/wife had no involvement in the conjugal life.

8. On the other hand, the respondent/wife as R.W.1 has deposed that the marriage was consummated even on the nuptial day itself and thereafter also they shared the bed. The claim of the respondent as evident from R.W.1 is that when the money as demanded by the petitioner/husband was not given, he tried to kill

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her which forced her to live away from the matrimonial home. R.W.1 denied that she scolded the petitioner in filthy language.

9. When the petitioner has come forward with the plea of cruelty, the burden lies on the petitioner to establish his case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. But a reading of his evidence does not establish that the petitioner/husband suffered cruelty, much less mental cruelty at the hands of the respondent/wife.

10. The evidence of P.W.2, father of the petitioner/husband is also not helpful to prove the case of the petitioner. He only speaks about the panchayat that took place about one month after the marriage between the petitioner and the respondent. It is his evidence that though his son reported to him that the respondent/wife picked up quarrels, he did not enquire the respondent/wife. When it is the case of the petitioner that in the house of one Srinivasa Chettiar, the respondent and her brothers abused and also beat him, as rightly pointed out by the trial Court, the petitioner should have examined the said Srinivasa Chettiar. There is no acceptable evidence on the side of petitioner to prove his case of cruelty, except his evidence in which also he has admitted that he had no intention to have sexual relationship with the respondent.

11. On the other hand, it is evident from R.W.1 that she behaved like a dutiful wife and she is willing to live with the petitioner. In evidence she explained the circumstances which forced her to live away from the matrimonial home that when she was about to leave for her mother's house for first Pongal festival, the petitioner asked her to bring Rs.5 lakhs from her parents, or otherwise he would kill her and when it became impossible for her to part with the sum demanded by the petitioner, the petitioner sent the divorce notice. She has further stated that she filed a petition for maintenance which is pending.

12. A conjoint reading of the evidence of P.W.1 and R.W.2 does not show that the petitioner suffered mental cruelty by means of non-consummation of the marriage or the respondent abused and treated the petitioner cruelly. Further, the petitioner in his evidence almost has spoken of the non-consummation of marriage, whereas he sought divorce on the ground of cruelty. It is a settled law that no evidence could be let in or looked into, without a pleading and hence, we hold that the petitioner has not proved his case of cruelty by way of acceptable evidence. The trial Court has rightly appreciated the evidence available on record and come to the conclusion that the evidence of petitioner

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is highly unreliable and without any due corroboration, and dismissed the petition.

We do not find any reason to interfere with the order of the trial Court. Accordingly, the appeal fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer,
The Family Court,
Salem.

2. The Section Officer,
VR Section, High Court,
Madras.

AKM(CO)
SR/10.1.2007

C.M.A.No.3211 of 2004

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